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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA REGION 10, 1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

In The Matter of:

Arrcom, Incorporated,
Drexler Enterprises, Inc.,
et. alia,

Respondents.

PERMIT NO. ID 0008000961

NO. X83-04-01-3008 &
83-04-02-3008

AGREED ORDER FOR PAYMENT OF
CIVIL PENALTIES
RE RESPONDENT WARREN BINGHAM

1. This proceeding for the assessment of civil penalties was commenced by the filing and issuance of a Complaint herein, X83-04-02-3008, against Respondent Warren Bingham and others pursuant to Section 3008 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6928.

2. The signatories hereto, parties herein, settle and resolve the claims set forth in the Complaint by the entry of this Order, and the said parties stipulate and agree (by their signatures below) this Order may be entered without further notice or proceedings herein.

FINDINGS OF FACT

1. A facility consisting of several storage tanks, oil reprocessing equipment, and two buildings exists on a site located near Rathdrum, Idaho, five (5) miles east of the Washington-Idaho stateline on Idaho state Highway 53 (fully described in Attachment 3) (hereinafter "the Rathdrum facility").

2. The Rathdrum facility was operated from at least January 1, 1980 for the storage, treatment and disposal of used oil, spent solvents, and chemical substances such as toluene and ethylbenzene.

3. The Rathdrum facility was operated by respondents Arrcom, Incorporated and Drexler Enterprises, Incorporated, and George W. Drexler, William Pickett, and Thomas Drexler, between at least January 1, 1980, and January 1, 1982. On or around January 3, 1982, the Rathdrum ceased operation as an active, processing facility.

4. Respondent Warren Bingham purchased the Rathdrum facility on January 1, 1980, thereafter owned and possessed the facility, and thereafter leased the facility to respondent Arrcom, Inc. Respondent Bingham did not operate in any way the active facility between January 1, 1980 and January 1, 1982. Arrcom's lease for the facility was terminated on or around January 3, 1982.

5. A Part A RCRA permit application for interim status was submitted for the Rathdrum facility on November 19, 1980, and this application listed the owner of the Rathdrum facility as Arrcom, Inc.

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2 6. Interim status for the treatment and storage of
3 hazardous wastes with ignitable characteristics at the Rathdrum
4 facility was recognized by the Environmental Protection Agency
5 (EPA) on August 11, 1981. No interim status was recognized for the
6 handling of any other hazardous wastes, or for the disposal of
7 ignitable characteristic hazardous waste.

8 7. During the operation of the Rathdrum facility, used
9 oil with ignitable characteristics and other chemical substances
10 such as toluene and ethylbenzene were released into the environment
11 at the facility through the dumping and/or spilling of used oil,
12 spent solvents, and other chemical substances such as ethylbenzene
13 onto the ground.

14 8. During the operation of the Rathdrum facility, no
15 security fence was placed around the facility, nor were any other
16 devices implemented to prevent the unknowing entry of persons or
17 livestock on the facility.

18 9. During the operation of the Rathdrum facility, no
19 efforts were made to minimize the possibility of any release of
20 hazardous wastes.

21 10. During the operation of the Rathdrum facility, no
22 external communication device capable of summoning emergency assist-
23 ance was kept at the facility.

24 11. During the operation of the Rathdrum facility, no
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1 written waste analysis plan was developed or utilized at the facility.

2 12. During the operation of the Rathdrum facility, no
3 written inspection schedule for equipment and storage units, or
4 hazardous wastes was developed or maintained at the facility.

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6 13. During the operation of the Rathdrum facility, no
7 attempts to make contingency arrangements with local authorities
8 were made.

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10 14. During the operation of the Rathdrum facility, no
11 manifest records or operating records were maintained at the facility.

12 15. During the operation of the Rathdrum facility, no
13 closure plan was developed or submitted for the facility.

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15 16. After January 1, 1982, no closure plan was submitted
16 to EPA, or implemented for the Rathdrum facility, nor was the
17 facility actively operated pursuant to applicable RCRA regulations.

18 17. In September, 1983, EPA undertook a cleanup effort
19 at the site, which removed most used oil, spent solvents, and other
20 chemical substances from the Rathdrum facility.

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22 18. At all times relevant herein, Respondent Bingham has
23 cooperated with EPA in granting access to the Rathdrum site.

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25 CONCLUSIONS OF LAW

26 1. From at least January 1, 1980 to September 1984,
27 the Rathdrum facility was an existing hazardous waste management
28 AGREED PENALTY ORDER - Page 4 of 10

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2 facility for the storage, treatment and disposal of hazardous
3 waste, pursuant to 40 CFR § 260.10.

4 2. The Part A permit application submitted for the
5 Rathdrum facility was submitted without a proper signatory for the
6 owner, in violation of 40 CFR § 270.10(b), formerly 40 CFR § 122.4(b).

7 3. The Rathdrum facility was used for the disposal of
8 hazardous wastes without a valid permit between January 1, 1980 and
9 September 1983, in violation of 40 CFR 270.1(b) and section 3005
10 of RCRA, 42 U.S.C. § 6925.

11 4. No efforts were made at the Rathdrum facility to
12 minimize the possibility of unauthorized entry during the operation
13 of the facility, in violation of 40 CFR § 265.14.

14 5. Inadequate efforts to minimize the possibility of
15 any release of hazardous waste at the facility were made at the
16 Rathdrum facility, in violation of 40 CFR § 265.31.

17 6. No external communication device capable of summoning
18 emergency assistance was provided at the facility, in violation of
19 40 CFR § 265.32.

20 7. No written waste analysis plan was developed or
21 utilized at the facility or elsewhere, in violation of 40 CFR
22 § 265.13(b).

23 8. No written inspection schedule was maintained at the
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facility or elsewhere, in violation of 40 CFR § 265.13(b)(1).

9. No written training schedule or records of training were developed or maintained at or for the Rathdrum facility or elsewhere, in violation of 40 CFR § 265.16.

10. No attempts were made to make emergency contingency arrangements with local authorities near the Rathdrum facility, in violation of 40 CFR § 265.37.

11. No efforts were made to develop a contingency plan for the Rathdrum facility, in violation of 40 CFR § 265.51(a).

12. No manifest records were retained or kept at the Rathdrum facility, in violation of 40 CFR § 265.71.

13. No operating records were maintained or kept at the Rathdrum facility, in violation of 40 CFR § 265.71.

14. No closure plan was developed, submitted or kept at the Rathdrum facility, in violation of 40 CFR § 265.112.

ORDER

Accordingly, it is hereby ORDERED AND ADJUDGED as follows:

1. The Respondent Warren Bingham shall pay to EPA the following amounts as civil penalties which are hereby assessed and imposed against the said Respondent:

A. Fifteen thousand dollars (\$15,000.00).

1 2. The total of the foregoing imposed penalties is
2 \$15,000.00, which said amount shall bear no interest from the
3 date hereof.

4 3. The payment of these imposed penalties is hereby
5 suspended and deferred to July 30, 1986, at which time they shall
6 be due and payable together with all interest accrued thereon
7 without further proceedings, or notice, or Order herein EXCEPT as
8 otherwise provided in paragraph 4.

9 4. The suspended and deferred payment portion of the
10 penalties imposed above shall be wholly excused automatically
11 on the said date together with all interest accrued
12 thereon without further proceedings herein if the affirmative
13 conditions or events specified in Attachment 1 do occur on time,
14 and if none of the negative conditions or events specified in
15 Attachment 2 occurs prior to the date specified in paragraph 3.

16 5. The suspended and deferred payment portion of the
17 penalties imposed above together with all interest accrued thereon
18 shall become immediately due and payable at an earlier date, namely,
19 upon the non-occurrence of any of the required conditions or events
20 specified in Attachment 1, or upon the occurrence of any one of the
21 negative conditions or events specified in the Attachment 2.
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1 6. The Respondent shall cause to be filed herein
2 affidavits which verify (on the basis of first hand knowledge of an
3 appropriate individual) the extent to which (if at all) the conditions
4 specified hereinabove have or have not been met or fulfilled as of
5 the date of such affidavit, as follows:

6 A. Whenever a negative condition listed in Attachment
7 2 occurs, an affidavit to that effect shall be promptly filed.

8 B. At least two business days prior to July 30,
9 1986, affidavit(s) shall be filed addressing each condition specified
10 in Attachments 1 and 2 (with the result that the payment of the
11 penalties remains deferred, or else the penalties become
12 payable, together with interest thereon as provided hereinabove).

13 7. By deferring payment of penalties adjudged herein,
14 the burden of proving that payment of those penalties remains
15 deferred and suspended is hereby placed upon Respondent Warren
16 Bingham.

17 8. EPA shall file herein a total satisfaction of this
18 Order if, as, and when any such total satisfaction occurs.


19 9. By stipulation signed by them and filed herein,
20 the parties hereto may change and extend any time period set forth
21 in Attachment 1, or the end date of the Order as stated in paragraph
22 3, above. Upon the filing of such a stipulation herein, the
23 said changes are thereupon incorporated into this Order automatically,
24 as part thereof.
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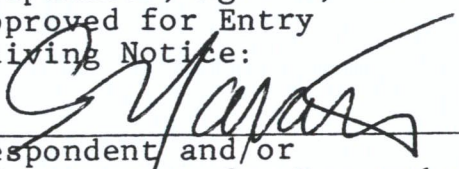
1 10. This Order, and any actions taken to satisfy this
2 Order, or any conditions therein (whether such action is the payment
3 of penalties or the completion or implementation of the closure
4 plan) shall not operate to relieve Respondent Bingham from any
5 further liability under the Resource Conservation and Recovery Act
6 of 1976, or the Comprehensive Environmental Response, Compensation
7 and Liability Act of 1980. If the deferred penalties described in
8 paragraph 2 above become due and owing, and are paid by Respondent
9 Bingham, Respondent Bingham may additionally be subject to imposi-
10 tion of a civil penalty upon notice and hearing of not more than
11 \$25,000 for each day any closure plan is not submitted, or any
12 approved plan is not implemented, pursuant to 42 U.S.C. § 6928(c).
13 Further liability may also include an additional administrative
14 order for failure to submit a closure plan after termination of
15 interim status at the Rathdrum facility, pursuant to 40 CFR §
16 265.112(c)(1), proposing civil penalties and ordering the submission
17 and implementation of a closure plan.

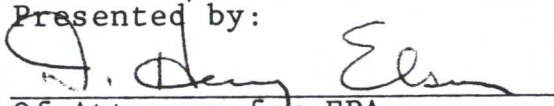
11. All written submissions under this Order shall be addressed to:

Kenneth Feigner, Waste Management Branch Chief
EPA Region 10, M/S 533
1200 Sixth Avenue
Seattle, Washington 98101

IT IS SO ORDERED this 20th day of June, 1985.


EPA REGIONAL ADMINISTRATOR

Stipulated, Agreed, and
Approved for Entry
Waiving Notice:

Respondent and/or
Of Attorneys for Respondent

Presented by:
 6/13/85
Of Attorney for EPA

ATTACHMENT 1

Affirmative Conditions

1. Not later than 60 calendar days after the date of this Order (but excluding the date hereof), Respondent Warren Bingham will submit either:

a. a written closure plan to EPA Region 10 for the Rathdrum hazardous waste management facility pursuant to all applicable parts of 40 CFR Part 265.110 - 265.120, Subpart G (1984);

or

b. written evidence to EPA Region 10 that Respondent has used his best efforts to fulfill 1.a. above.

2. If Respondent Bingham does not submit a written closure plan under part 1.a. above, but does submit written evidence under part 1.b. above; Respondent Bingham shall, not later than 120 calendar days after the date of this Order (but excluding the date hereof), submit a written closure plan to EPA Region 10 for the Rathdrum hazardous waste management facility pursuant to all applicable parts of 40 CFR § 265.110 - 265.120, Subpart G (1984).

3. Respondent Bingham will comply fully with all provisions of 40 CFR § 265.112(d) regarding any EPA approval, modification, or disapproval of any closure plan Respondent Bingham submits.

4. Immediately upon approval or modification of the

1 closure plan by EPA Region 10, Respondent Bingham will
2 complete implementation of the approved or modified written closure
3 plan not later than 180 calendar days after the date of approval or
4 modification (but excluding the date of approval or modification).

5 5. Respondent Bingham will submit to EPA Region 10 a
6 certification of closure which complies with 40 CFR § 265.115,
7 after implementation of the closure plan is complete for the Rathdrum
8 hazardous waste management facility.
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ATTACHMENT 2

Negative Conditions

1. The sale or transfer of any part of the Rathdrum facility without Respondent Bingham procuring the written promise of the prospective or immediate transferee (enforceable by EPA) to perform all decretal terms and provisions of this Order shall not occur any time before implementation of the closure plan described in Attachment 1 is complete.

ATTACHMENT 3

Description of the Facility

That portion of the Tracts 17 and 24, Plat No. 2, GREENACRES IRRIGATION DISTRICT, Kootenai County, Idaho, according to the plat thereof recorded in Book B of Plats at Page 51, records of Kootenai County, Idaho, described as follows:

COMMENCING at the Northeast corner of said Tract 24; thence, North $89^{\circ}32'45''$ West along the North line of said Tract 24, 208.0 feet to the Southwest corner of land described in the deed to Sam Green and wife recorded October 26, 1961 in Book 187 of Deeds at Page 216; being the TRUE POINT OF BEGINNING; thence, South $10^{\circ}26'45''$ East 241.15 feet to a point on the Northwesterly line of State Highway 53; thence, South $49^{\circ}20'$ West along said Northwesterly line 209.0 feet to an intersection with the Easterly line of land described in the deed to Theodore Day and wife recorded June 2, 1978 in Book 291 of Deeds at Page 449; thence, North $4^{\circ}24'$ West along said Easterly line, 408.0 feet to the most Southerly Southwest corner of land described in the deed to Theodore Day and wife recorded April 21, 1978 in Book 290 of Deeds at Page 484; thence, South $89^{\circ}32'45''$ East along the South line of said Day land, 147.1 feet to a point on the West line of land described in said deed to Sam Green and wife above mentioned; thence, South $0^{\circ}24'$ West along said West line, 31.5 feet to the TRUE POINT OF BEGINNING.